

JUDY KELLEY
GEORGE KELLEY

IBLA 81-494

Decided October 20, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 38524 and CA MC 38525.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

Because Regulation 43 CFR 3833.2-2 allows for the filing of a copy of the evidence of assessment work which was or will be filed for record, a copy of the recorded affidavit is not necessary to meet the filing requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). Failure to file timely such evidence of annual assessment work may not be excused because the recorded copy of the owner's affidavit of annual labor was not timely returned by the local recording office.

APPEARANCES: Judy Kelley, pro se and for George Kelley.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

George and Judy Kelley have appealed from the March 20, 1981, decision of the California State Office, Bureau of Land Management (BLM), declaring the Hate To Leave It mining claim (CA MC 38525) and the Lucky Strike mining claim (CA MC 38524) abandoned and void. Judy Kelley is the owner of the Lucky Strike claim and George, her husband, is the owner of the Hate To Leave It claim. The claims were originally located in 1945 and appellants assert ownership since 1968. Copies of the notices of location for these claims, as well as proofs of labor, were filed with BLM in September of 1979. However, the proof of labor that was due on or before December 30, 1980, was not filed until February 6, 1981.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. Dan Creek Placer Mines, 52 IBLA 243 (1981).

Appellant acknowledges that she and her husband failed to send in their proof of labor before the December 30, 1980, deadline. Although appellants sent it to the county recorder in November with a check for \$4, it was returned because the fee had risen. She sent it back immediately with the proper fee. However, the proof of labor was not returned showing it had been recorded until the BLM filing deadline had passed, but she sent it to BLM notwithstanding its lateness.

[2] It is unfortunate that appellant waited until the proof of labor came back from the local recording office. Departmental regulation 43 CFR 3833.2-2 states that evidence of assessment work must be in the form of "[a]n exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment work performed which was or will be filed for record * * * in the local jurisdiction of the State where the claim or group of claims is located and recorded." (Emphasis added.) Thus, filing a copy of the affidavit only after it was recorded in the local recording office is not necessary to meet the requirements

of section 314 of FLPMA, *supra*. Dan Creek Placer Mines, *supra*. Appellants could have met the requirement by filing with BLM a copy of the affidavit before it was actually accepted by the local recording office. In any event, under FLPMA their failure to file their affidavit timely may not be excused. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

We note that appellants may relocate these claims and record them as provided in 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Poindexter Lewis

Administrative Judge

Anne

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

